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**Objection to the Issuance of Solid Waste Permit Renewal Richmond Sanitary District**  
**James & Patricia Butcher, Petitioners; Richmond Sanitary District, Permittee/Respondent;**  
**Indiana Department of Environmental Management, Respondent**  
**2006 OEA 12 (05-S-J-3611)**

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**TOPICS:**

land application  
biosolids  
bedrock  
total coliforms  
fecal coliforms  
burden of proof

**PRESIDING JUDGE:**

Gibbs

**PARTY REPRESENTATIVES:**

Petitioners:	James & Patricia Butcher, <i>pro se</i>
Permittee/Respondent:	Kenyatta Cox
IDEM:	Kathleen Mills

**ORDER ISSUED:**

July 12, 2006

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

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3. Mr. James Butcher testified that on numerous occasions, he has taken samples of his drinking water and has the sample analyzed for total coliform (TC) and for fecal coliform (FC).
4. Respondent's Exhibit C shows that on two occasions - July 19, 2001 and August 9, 2001- the samples showed contamination above detection limits for both TC and FC. Contamination above safe drinking water limits for fecal coliform occurred on one of these occasions, July 19, 2001. On four other occasions - June 28, 2001, November 1, 2001, May 23, 2002 and August 28, 2003 – the samples showed contamination of TC at above detection limits, but fecal coliform was not detected.
5. On the one occasion that fecal coliform was above safe drinking water levels, on July 19, 2001, the Whitewater River had flooded the Petitioner's property.
6. Total coliform includes most organic matter, including, soil, grass, human and animal waste. Fecal coliform result from human and animal waste.
7. If the application of the biosolids were the source of the contamination to Mr. Butcher's well, fecal coliform would also be present in the samples.
8. The IDEM inspected the land application activities at the Properties in August 2003 and noted no violations of the Permit in effect at that time.
9. There is a minimum of twenty (20) inches of soil above the bedrock at these Properties.

Conclusions of Law

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to IC 4-21.5-7-3.
2. This office must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency's initial factual determination is not allowed. *Id.*; I.C. 4-21.5-3-27(d). "*De novo* review" means that:

all are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.

*Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind.Ct.App. 1981).

3. Pursuant to IND. CODE § 4-21.5-3-14 and IND. CODE § 4-21.5-3-27(d), the person seeking review of a permit has the burden of presenting substantial and reliable evidence proving that the IDEM improperly issued the permit in question.

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4. The Butchers have failed to meet this burden. They did not present sufficient evidence to show that the source of contamination in their drinking water well was the land application of biosolids to the Properties. The presence of total coliform, in and of itself, is not sufficient to show that that biosolids were the source of the contamination. The absence of fecal coliform in all but one sample is evidence that contradicts the Butchers' contentions that the biosolids are the source of the contamination. The one sample that showed the presence of fecal coliform was after the nearby river flooded. The fecal coliform on that occasion could have been from any number of sources, including the Butchers' own septic system.
5. The Butchers also failed to present substantial evidence that there was less than twenty (20) inches of soil above the bedrock at the Properties.

**Final Order**

**AND THE COURT**, being duly advised, hereby **ORDERS, JUDGES AND DECREES** that the Petitioner has not met its burden of proof in this matter. The Permit was properly issued. The Petitioner's objections to the issuance of the Permit are dismissed.

You are hereby further notified that pursuant to provisions of IND. CODE § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED THIS 12th day of July, 2006.

Catherine Gibbs  
Environmental Law Judge